

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER HUDSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE
MANAGEMENT COUNCIL, *et al.*,

Defendants.

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) Civ. Action No. 18-CV-4483-RWS

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) **JOINT 26(f) Report**

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Counsel for the Parties in the above-captioned matter participated in a telephonic Rule 26(f) conference on September 11, 2018, and continued to confer on various dates thereafter regarding issues raised at the initial conference. Pursuant to Rule 26(f)(2), the Parties provide the following written report.

I. Pending and Anticipated Motions

Defendants have moved to dismiss all of Plaintiff's claims. Pursuant to the Stipulation of the Parties (*see* Dkt. No. 44-1) and Order of this Court (Dkt No. 45), Plaintiff's opposition is due October 30, 2018 and Defendants' reply briefs are due November 30, 2018.

At the telephonic Rule 26(f) conference, Defendants informed Plaintiff that they intend to seek a stay of all discovery pending the Court's resolution of Defendants' motions. Plaintiff's counsel responded by stating that Plaintiff would not agree to stay all discovery, but would be willing to limit discovery to written discovery (i.e. discovery pursuant to Rules 33, 34, 36 and document subpoenas) until the motions to dismiss were decided. Defendants did not accept Plaintiff's proposed compromise.

As this case was filed as a class action, Plaintiff expects to file a motion for class certification.

To the extent that the Defendants' motions to dismiss are denied, Defendants may file a motion for summary judgment on or before Plaintiff's deadline for filing a motion for class certification.

II. Proposed Case Management Plan

Notwithstanding their disagreement concerning discovery, the Parties discussed a potential schedule for this matter, subject to the outcome of Defendants' anticipated motion(s) to stay discovery.

A. Rule 26(a) Disclosures

The Parties have agreed to exchange written Rule 26(a) disclosures on October 16, 2018 even if discovery is otherwise stayed. The Parties also agreed to produce documents identified in their Rule 26(a) disclosures (including any relevant insurance policies) by November 2, 2018.

B. Class Certification

Plaintiff plans to file a motion for class certification.

Plaintiff's Proposal:

The Parties have proposed the following briefing schedule

- Plaintiff's motion: Due 120 days after all Defendants have answered the Complaint
- Defendants' response: Due 45 days after Plaintiff's motion
- Plaintiff's reply: Due 30 days after Defendants' response

To the extent that Defendants respond to Plaintiff's motion for class certification by filing separate oppositions, Plaintiff also requests permission to file a single consolidated reply to Defendants' oppositions to class certification not to exceed the total amount of pages that Plaintiff would be entitled to file if he filed separate replies to each opposition (i.e. similar to what the Court allowed in Dkt No. 45).

Defendants' Proposal:

Defendants propose the following class certification briefing schedule:

- Plaintiff's motion: Due 60 days after close of initial class discovery period
- Defendants' response(s): Due 60 days after Plaintiff's motion
- Plaintiff's reply: Due 30 days after Defendants' response

Defendants do not oppose Plaintiff's request to file a single consolidated reply to Defendants' oppositions to class certification.

C. Deadline to Amend Pleadings or Add Parties

Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court, per Fed. R. Civ. P. 15.

Plaintiff's Proposal

The deadline to amend pleadings under Rule 15 only without having to meet the Rule 16 standard for good cause will be the same date as Plaintiff's motion for class certification is due. Plaintiff requests this deadline as it may be necessary to modify the class definition, to add an additional class representative or otherwise modify the allegations for purposes of class certification.

Defendants' Proposal

Any motion to amend or to join additional parties shall be filed within 30 days from the date of entry of the Court's Rule 16 scheduling order, after which date any motion to amend or join additional parties will be subject to the "good cause" standard in Fed. R. Civ. P. 16(b)(4).

D. Fact Discovery Completion Date

Plaintiff's Proposal:

End of Fact Discovery: December 1, 2019 (or if Defendants' motion to stay is granted, year from the date that Defendants' Answer the Complaint).

Plaintiff disagrees with Defendants' proposal to bifurcate discovery as impractical and inefficient as there will be a likely overlap between any discovery necessary for class certification and the merits.

Defendants' Proposal:

Defendants propose bifurcating fact discovery into the following periods:

- Initial class discovery period – 120 days (from the Rule 16 Conference or, if Defendants’ motion to stay is granted, from the date that Defendants’ answer Plaintiff’s complaint).
- Additional discovery period – 180 days after Plaintiff’s motion for class certification is decided.

E. Expert Discovery

At this time, the Parties contemplate that expert testimony may not be necessary in this case; however, each of the Parties recognize that fact discovery might reveal that expert testimony will be useful on some matters.

Plaintiff’s Proposal:

As the Parties recognize that there may not be a need for expert discovery in this case, Plaintiff proposes the following:

- By September 1, 2019 (or 60 days before the end of the fact discovery deadline), each of the Parties will file with the Court a statement stating whether the Party use an expert or experts (other than solely to respond to an opposing Party’s expert) and the general subject matter of that testimony; however, the Party will not be required to disclose the identity of the expert or make the Rule 26(a)(2) disclosures at that time.
- In the event that any Party files a statement that it intends to designate an expert, the deadlines will be as follows:
 - Initial Expert Disclosures Pursuant to Rule 26(a)(2): February 3, 2020 (60 days after the close of fact discovery)

- Expert Disclosures solely intended to contradict or rebut testimony on the same subject matter disclosed in an opposing party's Initial Expert Disclosures: March 1, 2020 (or 30 days after those disclosures)
- End of Expert Discovery: April 3, 2020

Defendants' Proposal:

Defendants believe that Plaintiff's proposal to require the Parties to submit a filing to the Court detailing whether each Party intends to use an expert is unnecessary and inefficient, and that disclosures under the Federal Rules are sufficient.

- Initial Expert Disclosures Pursuant to Rule 26(a)(2): 60 days after the close of fact discovery
- Expert Disclosures solely intended to contradict or rebut testimony on the same subject matter disclosed in an opposing party's Initial Expert Disclosures: 30 days after initial expert disclosures
- End of Expert Discovery: 120 days after the close of fact discovery

F. Dispositive Motions

Parties' Joint Proposal:

Dispositive Motion Deadline: Due 60 days after close of all discovery

Opposition to Dispositive Motions: Due 45 days after motions

Replies in Support of Dispositive Motions: Due 30 days after replies.

To the extent that Defendants file separate motions for summary judgment, Plaintiff requests permission to file a single consolidated opposition brief to Defendants' motions not to exceed the total amount of pages that Plaintiff would be entitled to file if he filed separate opposition briefs to each motion (i.e. similar to what the Court allowed in Dkt No. 45).

Plaintiff's Additional Proposal:

Under Plaintiff's proposed schedule (assuming discovery is not stayed), Plaintiff proposes the following dates (which are consistent with the schedule proposed above):

Dispositive Motion Deadline: June 3, 2020

Opposition to Dispositive Motions: July 17, 2020

Replies in Support of Dispositive Motions: August 17, 2020

Additionally, in the event that no Party intends to designate an expert, Plaintiff proposes that dispositive motions be due 60 days after the close of fact discovery.

G. Trial

This case will be a non-jury trial.

III. Consent to a Magistrate

All parties have not consented to refer this case to a Magistrate for all purposes.

IV. Electronic Stored Information

The Parties briefly discussed the existence of the discovery of electronic information. They do not anticipate any unique or unusual issues. Defendants' counsel stated that if relevant ESI exists, it likely exists in the form of email.

V. Confidentiality Issues

The Parties are conferring on a proposed confidentiality order regarding confidential, proprietary, and "protected health information," and will present that to the Court for its consideration.

VI. Privilege Issues

At this time, the Parties do not anticipate any unique or unusual issues concerning privilege or work product protection. To facilitate discovery, the Parties may enter into a Rule 502(e) agreement, and ask the Court to adopt the agreement in a Rule 502(d) order.

VII. Settlement

The Parties discussed the possibility of settlement during their Rule 26(f) conference. Plaintiff's counsel explained that Mr. Hudson is interested in resolving the case on behalf of the Class and that in order to make a settlement demand on behalf of the class, Plaintiff's counsel would need to obtain some information about the class from Defendants and inquired whether Defendants would be willing to provide such information. Defendants' position is that settlement is unlikely at this time and Defendants are not interested in exploring a class-wide settlement at this time. However, Defendants may be open to discussing settlement once the motions to dismiss are fully briefed and the parties have exchanged initial disclosures.

Dated: September 25, 2018

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